IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 4737 OF 1998.

1. M/s.Godrehj Soaps Ltd.,
   a public limited company, registered
   under the Companies Act, 1956 and
   having their office at Pirojshanagar,
   Eastern Express Highway, Vikhroli,
   Mumbai 400 079.

2. M/s.The New India Assurance Co.Ltd.,
   a body corporate, subsidiary of
   General Insurance Corporation of
   India having their registered office
   at 87, M.G.Road, Mumbai 400 001,
   and one of their Tied Divisional
   Office No.120700 at Maker Chamber
   III, Nariman Point, Mumbai 400 021. ... Plaintiffs.

Versus.

M/s.Asia Pacific Parcel Tankers Pte.Ltd.,
a foreign shipping company incorporated
at Singapore and having their office at
27C, Tanjong Pagar Road, Singapore
088450, and carrying on their business
in Mumbai through their Agents M/s.
Parvolk (A Divn.of Forbes Gokak Ltd.)
19, J.N.Heredia Marg, Ballard Estate,
Mumbai 400 038. ... Defendant.

Shri V.S.Amin i/by M/s.V.S.Amin & Co. for the Plaintiffs.

None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 31st July, 2007.

ORAL JUDGMENT.:

1. This suit is listed on the board under the caption of "Undefended suits for exparte decree". The learned Counsel for the Plaintiffs has tendered on record an affidavit in lieu of evidence of Mrs.Maithili

Mohan Kulkarni, Assistant Manager of the 2nd Plaintiff. The affidavit is marked "X" for identification and is taken on record. The Plaintiffs have also tendered the original documents along with a list. The original documents along with the list are marked "Y" (collectively) for identification and the same are taken on record.

2. The 1st Plaintiff is a registered partnership firm and the 2nd Plaintiff is an Insurance company. The Defendant is a shipping company incorporated in Singapore and having management, control, possession and coverage of M.T. "SEASTORK" and carry on business of carriers of goods by sea for consideration. According to the Plaintiffs, the Defendant is carrying on its business in Mumbai through its agents M/s.Patvolk (a Division of Forbes Gokak Ltd.) having its office at Mumbai.

3. A shipper M/s.Kalmart System (M) SDN BHD Pte.Ltd.. having its office at Kuala Lumpur, Malaysia, sold in favour of the 1st Plaintiff 991.642 M.T. of Palm Kernel Fatty Acid Split for a total sum of US $518,628.77. According to the Plaintiffs, the said goods were entrusted to the Defendant as owners and/or charterers of steamship vessel m.t."Seastork" for its carriage and safe delivery from Pasir Gudang (Malaysia)

to Mumbai. The Defendant issued bill of lading dated 3rd November 1997 evidencing that 991.642 M.T. Palm Kernel Fatty Acid Distillate was shipped in sound condition for its safe and timely delivery from Pasir Gudang (Malaysia) to Mumbai Port. According to the Plaintiffs by reason of the said bill of lading the Defendant entered into a contract to deliver the said goods in the same order and condition as shipped to the first Plaintiff as owners thereof. According to the Plaintiffs all the rights in respect of the said bill of lading are vested with the 1st Plaintiff as owners and/or endorsee thereof.

5. According to the Plaintiffs, the said M.T. Seastrok arrived at Mumbai Port on 15th November 1997 and at the time of discharge, the Defendants delivered only 979.210 M.T. of Palm Kernel Fatty Acid Distillate as against the bill of lading quantity of 991.642 M.T. thereby resulting in short delivery of 12.432 M.T. of the goods. The 1st Plaintiff therefore requested the Defendant’s Agents to arrange for a ship’s survey. However, the Defendant’s Agents failed to arrange for the ship’s survey. Therefore, the 1st Plaintiff appointed M/s.Hansraj Mathurdas, Mumbai, an independent surveyors to assess the loss and to conduct a detailed survey. The said surveyors conducted the survey and submitted a report dated 1st December 1997 and confirmed

the short delivery of 12.432 M.T. of the goods.

6. The 1st Plaintiff by its letter dated 14th January 1998 and letter dated 20th June 1998 addressed to the Defendant's agents in Mumbai lodged a claim for Rs.2,37,413/- for loss suffered by the Plaintiffs due to short landing of 12.432 M.T. of Palm Kernel Fatty Acid Distillate. The 1st Plaintiff thereafter through their Advocate's letter dated 1st September 1998 once again called upon to the Defendant's agents to settle the said loss. Though the claim was duly received by the Agents of the Defendant, there was no response from the Defendants.

7. The 1st Plaintiff had insured the aforesaid consignment with the 2nd Plaintiff for transit risk from the Port of loading to Mumbai vide Insurance Policy dated 1st Octobner 1997. After the 1st Plaintiff lodged the claim with the 2nd Plaintiff, the 2nd Plaintiff paid a sum of Rs.1,65,802/- to the 1st Plaintiff being the loss suffered by the 1st Plaintiff. Thereafter on 6th August 1998, the 1st Plaintiff executed in favour of the 2nd Plaintiff a letter of subrogation as well as a special power of attorney authorising the 2nd Plaintiff to recover the amount of loss suffered by the 1st Plaintiff. Accordingly the present suit has been filed for recovery of the sum of Rs.1,65,802- with further

interest at the rate of 18% per annum.

8. The Plaintiffs have placed on record the following original documents; viz. (i) Invoice dated 3rd November 1997; (ii) bill of lading dated 3rd November1997 issued by the Defendant; (iii) Remark list certificate dated 5th March 1998; (iv) Survey report dated 1st December 1997 of M/s.Hansraj Mathuradas, Mumbai; (v) Letter of subrogation dated 6th August 1998 executed by the 1st Plaintiff in favour of the 2nd Plaintiff; and (vi) Special power of attorney of the same date executed by the 1st Plaintiff in favour of the 2nd Plaintiff. The said documents have been duly proved by the affidavit in lieu of evidence of Mrs.Maithili Mohan Kulkarni, Assistant Manager of the 2nd Plaintiff. The claim in the suit is also proved by the said affidavit.

9. In the circumstances, a case is made out for passing a decree in favour of the Plaintiffs. Considering the facts and circumstances and in the absence of any stipulation in the contract regarding payment of interest, the further interest will have to be fixed at 9% per annum.

10. Hence there will be a decree in terms of prayer clauses (a) and (b) with modification that the interest at the rate of 9% per annum will be payable from the date of filing of the suit till realisation or payment.

11, The Plaintiffs will be entitled to refund of Court fees, if any, in accordance with the rules.

12. Certified copy is expedited.

Judge.

Judge.